



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	Chapter 110
Regulation Title:	Eligibility and Appeals
Action Title:	Authorized Applicant
Date:	2/25/2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulatory action establishes which individuals and the circumstances in which those individuals, who have been appointed by a Medicaid applicant as an authorized representative, may sign applications and otherwise conduct business with Medicaid in the applicant's name. This action is necessary due to repeated instances identified by DMAS of individuals attempting to sign for and actually signing for Medicaid applicants without the applicants' knowledge or consent. These actions have resulted in illegal and inappropriate eligibility determinations and payment of expenses.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There are no changes being made in these final regulations except for a few technical, editorial changes in 12 VAC 30-110-1350.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended regulations 12 VAC 30-110-1350 through 12 VAC 30-110-1396, Eligibility and Appeals: Authorized Applicant and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

2/25/2003

Date

/s/ P.W. Finnerty

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The *Code* also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4009, for this agency's promulgation of proposed regulations subject to the Governor's review. Federal regulations at 42 CFR §§ 435.906 and 435.907 provide that an individual must be afforded an opportunity to apply for Medicaid. The agency must require a written application from the applicant, his authorized representative or, in the case of an incompetent or incapacitated individual, someone acting responsibly on his behalf.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation is essential to protect the health and welfare of citizens and for the efficient and economical performance of an important governmental function. This regulation is necessary to specify who is legally able to apply for Medicaid for himself or on behalf of another person and to prevent persons who are not legal representatives from making applications.

Medicaid is a multi-billion dollar program that expends public funds to provide health care on behalf of eligible individuals. The Department must ensure that program funds are expended only on behalf of eligible individuals and protect the program from fraud and abuse. Eligibility determination is based upon personal and financial information submitted by individuals applying for Medicaid or by individuals applying on behalf of others. In addition, certain legal assignments of rights must be provided as a condition of eligibility.

The adult caretaker relative definition set forth in these regulations, who is authorized to apply for Medicaid on behalf of a child, conforms to the definition set forth in the FAMIS regulations regarding who is authorized to apply for FAMIS program benefits on behalf of a child.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

This regulatory action proposes state regulations concerning which individuals are authorized to sign Medicaid applications. In the past, the Department has found itself faced with applications filed without the knowledge and approval of the applicant or filed on behalf of incompetent or incapacitated individuals by others who have no legal authority to conduct business on behalf of

the applicant. To ensure that applications are only filed with the full knowledge and consent of an applicant or by someone legally acting on his behalf, the Department proposes this regulation.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage in promulgating these regulations is to legally establish who may sign applications and otherwise conduct Medicaid business in the applicant's name. The regulations serve to protect individuals who are unable to sign applications on their own behalf by specifying who is authorized to act on their behalf and prohibit individuals who have no legal authority from acting on behalf of another when applying for Medicaid. There are no disadvantages to the public, agency or the Commonwealth.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations were published in the December 16, 2002, Virginia Register (VR 19:7) for their public comment period from December 16, 2002, through February 14, 2003. No comments were received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

12VAC 30-110-1350, Definitions, sets out definitions for the new terms used in this regulatory package that relate to who can file an application for Medicaid.

12VAC 30-110-1360, Right to apply, provides that an individual who is 18 years of age cannot be refused the right to apply for Medicaid or be discouraged from applying for assistance for himself.

12VAC 30-110-1370, Applicant's signature, provides that a Medicaid applicant must sign a State approved application form unless the application is filed and signed by specified individuals

authorized to act on behalf of the individual. For applicants who cannot sign their name, a provision is made for the individual's mark to serve as his signature, provided that it is correctly designated and witnessed.

12VAC 30-110-1380, Authorized representative for individual age 18 or older, sets forth the provisions under which someone can act on behalf of an individual who is 18 years of age or older in filing a Medicaid application. Additionally, this section sets forth procedures to follow when an individual is unable sign an application for Medicaid and has no legal representative.

12VAC 30-110-1390, Authorized representative for children under 18 years of age, sets forth provisions under which someone can act on behalf of a child under the age of 18 in filing a Medicaid application. This sections provides that a parent, guardian or legal custodian, caretaker relative with whom the child lives who is related to the child by blood or marriage, or an authorized representative designated by one of the aforementioned individuals can complete a Medicaid application on behalf of a child applicant.

12VAC 30-110-1395, Authorized representative for a deceased applicant, sets forth the provisions under which a Medicaid application can be filed on behalf of a deceased individual and who is authorized to file such an application.

12VAC 30-110-1396, Persons prohibited from signing an application, provides that employees of or an entity hired by a medical service provider is prohibited from signing a Medicaid application on behalf of a deceased individual or an individual who cannot designate someone to act on his behalf.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The purpose of these regulations is to ensure that only individuals who desire to apply for assistance or persons acting legally on their behalf can sign an application. In developing these regulations, the Department has reviewed the impact that these regulations will have on families and their ability to remain self-sufficient and maintain personal responsibility. The regulations will encourage self-sufficiency and personal responsibility by ensuring that individuals act on their own behalf or authorize others to act responsibly for them. These regulations propose to help ensure that only individuals legally authorized to act on behalf of incompetent or incapacitated individuals may apply on their behalf.